IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 11326 of 2005

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THE KHERALU NAGARIK SAHKARI BANK LTD. - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Applicant(s) : 1,
MR HL JANI for Respondent(s) : 1,
M/S THAKKAR ASSOC. for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 12/04/2006

ORAL ORDER

By way of this Criminal Misc. Application, the applicant has prayed for issuance of a direction quashing and setting aside the order dated 16.09.2005 passed by the Additional Sessions Judge and Presiding Officer, Fast Track Court No. 2, Ahmedabad (Rural) in Cr.ma No. 715/2005 thereby cancelling the bail granted to accused no. 1-respondent no.2 herein.

Mr P.K Jani, learned counsel for the applicant has contended that the respondent no.2 was working as a General Manager of the Sola Road branch of the applicant Bank and that during his tenure, he caused financial loss

to the applicant bank to the extent of Rs. 3,50,64,825/- by way of fraudulent transactions in connivance with original accused no.2 namely Chandrakant Amratlal Bhavsar working as a peon, original accused no.3 namely Mrs Manoramaben Chandrakant Bhavsar- wife of original accused no.3 and original accused no.4 namely Kamlesh P Shah working as a clerk with the said bank.

Mr Jani has further submitted that inspite of the complaint filed on 21.10.2003 by the original complainant, no actions were taken thereof and therefore Special Criminal Application No. 74/2005 was filed before this Court whereby the following order was passed on 16.03.2005 :

> “The papers of investigation are before the Court for perusal. According to ld. APP Mr. AJ Desai that respondent No.4-accused No.4 is not tracable. According to Investigation Agency, there is no legal evidence to implicate respondent No.5 -accused No.5 in the crime in question and it is very likely that the Investigating Agency may submit the report accordingly. If such a report qua respondent No.5 is filed, the original complainant can take appropriate steps after going through relevant papers. However, Investigating Agency ought to have taken legal steps against respondent No.4 in view of the Scheme of Sections 82 & 83 of CrPC declaring respondent No.4 as accused absconding. According to ld. APP Mr. Desai, Investigating Agency shall start take appropriate steps for the purpose as early as possible

> and preferably within 10 days from today. Directions accordingly. With the above directions and observations, ld. counsel Mr. Jani has not pressed this petition at this stage. Petition stands disposed of as not pressed. Notice discharged. It is, however, observed that the petitioner can approach this Court in case of difficulty.
> Notice discharged."

Subsequently, respondent no.2 was arrested on 24.08.2005 and he thereafter preferred bail application on 01.09.2005. The respondent no.2 was granted bail on 16.09.2005 by the Additional Sessions Judge.

Mr Jani has further contended that while enlarging the respondent no.2 on bail, one of the grounds considered by the Sessions Court was that the original accused no.4 namely Kamlesh Shah was granted bail by this Court by order dated 13.08.2004 in Criminal Misc. Application No. 6534/2004 wherein condition no. 2 (ii) reads as under :

> "The statement of witness – Bhavanbhai Parbat Patel dated 2nd June, 2004 reveals that only the Manager had the pass word for permitting the overdrafts in excess of the balance in the account. The cheques collected indicate that the endorsement is of "signature verified and pay cash"

The other grounds considered by the Sessions Court were that charge-sheet was filed and that there was no question of further investigation. The Sessions Court

has also considered that earlier no bail application was preferred by the respondent no.2 and therefore granted bail to respondent no.2 after taking into consideration all these aspects alongwith the observation that all the documents were in the custody of the police.

Mr Jani has emphasized the following points for consideration by this Court :

(i) The Sessions Court has committed an error in granting bail to the respondent no.2 on parity in-as-much as this Court while granting bail by order dated 13.08.2004 has observed as aforesaid in para 2(ii) in Criminal Misc. Application No. 6534/2004.

(ii) When the charge-sheet was filed, the respondent no.2 was shown to be absconding and even then the Sessions Court granted bail.

(iii) The Sessions Court has failed to appreciate that the respondent no.2 had filed application for grant of anticipatory bail in Sessions Court being Criminal Misc. Application No. 1318/2003 which was withdrawn and thereafter Criminal Misc. Application No. 6449/2004 was again filed before this Court and the same was withdrawn

too on 21.07.2004 prior to three weeks of the bail granted by this Court to original accused no.4.

Mr P.M Thakkar, learned counsel for respondent no.2 has submitted that while considering the case for cancellation of bail, the Court has to consider whether the grounds which are considered by the Sessions Court are valid or not. He has further submitted that no case is made out for cancellation of bail in the present case and while exercising power to cancel the bail already granted, this Court should consider that this is not a crime where the applicant is involved and the original accused no. 2 and 3 who are relatives of the director of the applicant bank and respondent no.2 being an employee of the applicant bank was required to follow the instructions of the director. He has further submitted that even in the audit report these points were pointed out but the complaint is filed at a belated stage and in that view of the matter, this is not a fit case where this Court should interfere in the matter of cancellation of bail.

Mr H.L Jani, learned APP appearing for the State has supported the case of the applicant and has submitted that though the Sessions Judge himself has observed that

the signature of one of the co-accused was done by accused no.2 and inspite of that cash transactions were undertaken by respondent no.2.

Heard learned counsel for the parties. From the principles which is emerging from the above referred judgements, the Sessions Court has failed to consider the following important aspects :

(i) While granting bail, the Court has to keep in mind that if the accused is absconding then the Court should refrain from granting bail to such persons. In the present case, though in the charge-sheet it was specifically stated that respondent no.2 is absconding, the Sessions Court has not examined the matter thoroughly or has ignored the said fact conveniently. In that view of the matter, the consideration weighed by the Sessions Court is contrary to record.

(ii) The Sessions Court has granted bail on the basis of parity on the judgement of this Court ignoring the fact that the name of respondent no.2 is specifically mentioned. In my view, the discretion exercised by the Sessions Court is not proper and warranted in case of the person who is a manager and on whose instance the final

transaction has been entered into to dupe the applicant bank to crores of Rupees.

(iii) The complaint was filed in the year 2003 and for two years the respondent no.2 was not available. The charge-sheet and other police record state that the respondent no.2 was absconding though Mr Thakkar contended that respondent no.2 was not declared so by the police as required under the Cr.P.C. Nevertheless it has not been established that after the complaint was filed, the respondent no.2 has co-operated with the investigation. In that view of the matter, I am of the opinion that in view of the observation made by the Apex Court in 1985 SC 386 the bail granted by the Sessions Court is required to be cancelled.

In view of the above the order dated 16.09.2005 passed by the Additional Sessions Judge and Presiding Officer, Fast Track Court No. 2, Ahmedabad (Rural) in Cr.ma No. 715/2005 is quashed and set aside thereby cancelling the bail granted to accused no. 1-respondent no.2 herein. The respondent no.2 shall surrender before the authorities on or before 04.05.2006. Rule is made absolute accordingly.